



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 21

RIN 2900-AO87

Vocational Rehabilitation and Employment Program: Changes Related to the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation to reflect a change made by the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012. If a veteran has been displaced as the result of a natural or other disaster while being paid an allowance, referred to as an employment adjustment allowance, this Act allows the extension of the allowance. This amendment is necessary to conform the regulation to the statutory provision.

DATES: Effective Date: This final rule is effective [Insert date of publication in the FEDERAL REGISTER].

Applicability Date: In accordance with the amended statutory provision of 38 U.S.C. 3108(a)(2), this final rule pertains to all awards of employment adjustment allowance processed on or after August 6, 2013.

FOR FURTHER INFORMATION CONTACT: C.J. Riley, Policy Analyst,
Vocational Rehabilitation and Employment Service (28), Veterans Benefits
Administration, Department of Veterans Affairs, 810 Vermont Ave., NW.,
Washington, DC 20420, (202) 461-9600. (This is not a toll-free telephone
number.)

SUPPLEMENTARY INFORMATION: Section 3108 of 38 U.S.C. establishes the
criteria for entitlement to allowances payable under 38 U.S.C. chapter 31.
Section 3108(a)(2) provides for payment of a subsistence allowance for any
veteran who has been rehabilitated to the point of employability for two months
while the veteran is satisfactorily following a Vocational Rehabilitation and
Employment (VR&E) program of employment services. This statutory provision
regarding a veteran's entitlement to such subsistence allowance, referred to as
an employment adjustment allowance (EAA), is implemented by 38 CFR 21.268.

Section 701(b) of Public Law 112-154, Honoring America's Veterans and
Caring for Camp Lejeune Families Act of 2012, amended 38 U.S.C. 3108(a)(2)
by providing that VA may extend the payment of an EAA up to an additional two
months while the veteran is satisfactorily following a VR&E program of
employment services if the veteran has been displaced as a result of a natural or
other disaster while being paid an EAA. To make it clear that a veteran
displaced as a result of a natural or other disaster may receive up to an
additional two months of the EAA, we are amending our regulation to include this
requirement. VA is implementing the statutory amendment in 38 CFR 21.268 by

re-designating current paragraph (f), “Employment adjustment allowance not charged against entitlement.”, as new paragraph (g), and adding a new paragraph (f), “Special situations.” We will start paying this additional two months of EAA beginning August 6, 2013, when the law took effect. We note the effective date of August 6, 2013, in new paragraph (f). In addition, we are adding an authority citation to the end of the paragraph for clarification.

Administrative Procedure Act

The Secretary of Veterans Affairs finds there is good cause under the provisions of 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule without prior opportunity for public comment and with an immediate effective date. The regulatory change made by this rule reflects a change in statute that VA is adopting directly, without change, into VA’s regulations. By statute, Congress is allowing up to an additional two months of a special allowance for veterans following a program of employment services who have been displaced as a result of a natural disaster. The regulatory change does not involve interpretation of this statutory provision. Consequently, opportunity for public comment is unnecessary. The statutory change was enacted on August 6, 2012, made effective on August 6, 2013. Due to the above considerations, VA is issuing this rule as a final rule, effective immediately upon publication.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be

a significant regulatory action under Executive Orders 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

Regulatory Flexibility Act

The Secretary hereby certifies that adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the regulatory flexibility analysis requirements of section 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this final rule is 64.116, Vocational Rehabilitation for Disabled Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on February 27, 2014, for publication.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Dated: March 19, 2014

Robert C. McFetridge, Director,
Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 21 as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

1. The authority citation for part 21, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

2. Amend § 21.268 as follows:

- a. Redesignate paragraph (f) as paragraph (g).
- b. Add a new paragraph (f).
- c. Add an authority citation at the end of new paragraph (f).

The revisions read as follows:

§ 21.268 Employment adjustment allowance.

* * * * *

(f) Special situations. Effective August 6, 2013, a veteran who has been displaced as the result of a natural or other disaster while being paid an employment adjustment allowance may receive up to an additional two months of

employment adjustment allowance, if satisfactorily following a program of
employment services.

(Authority: 38 U.S.C. 3108(a)(2))

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